IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 750 OF 2006
IN
Notice of Motion No. 3505 of 2006
IN
SUMMARY SUIT NO. 1569 OF 2004

RUKMINI DEVI .. APPELLANT.

V/s.

1. M/s.Prince Multiplast Pvt.Ltd.
and others .. Respondents.

Mr.N.K.Mudnaney for the Appellant.

Ms.Neeta Solanki i/by M/s. Kiran Jain & Co. for the Respondent No.1.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 17TH OCTOBER, 2006.

P.C.:

. We heard Mr. N.K.Mudnaney, the counsel for the Appellant and perused the impugned order and the available material.

2. It is not in dispute that on 30th September, 2004, the decree was passed in Summary Suit No. 1569 of 2004. The Appellant is defendant No.4 in the suit. The execution of the said decree has been levied and this is an admitted position that the immovable property of the

Appellant situate at 21-22, Mahaveer Nagar -A, Opp.Ram Dawara Sanganer, Jaipur, has been attached in the month of September, 2006 by the District Court, Jaipur. It appears that thereafter the Notice of Motion has been taken out by the present Appellant for setting aside the decree dated 30th September, 2004 and stay of further proceedings in execution, until disposal of the Notice of Motion. By the impugned order, the learned Motion Judge has declined to grant any ad-interim relief.

3. The counsel for the Appellant submitted that the Appellant was not the partner to the firm at the relevant time nor a writ of summons can be said to have been served on him.

4. In the impugned order, the learned Motion Judge has observed that the Defendant No.4 (Appellant herein) had refused the service. Prima facie, therefore, the learned Motion Judge was of the view that the writ summons can be said to have been served on the Defendant No.4. At this stage, we find no justifiable reasons to take a different view. No case for interference is made out.

5. Appeal is dismissed in limini.

6. Liberty is granted to the Defendant No.4 to apply to the learned Motion Judge for expeditious hearing of the Notice of Motion.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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